

Memorandum 2000-48**Separation of Functions in DMV Hearings**

BACKGROUND

The provisions of the Administrative Procedure Act governing administrative adjudication by state agencies were comprehensively revised in 1995 on recommendation of the Law Revision Commission. A key provision of the 1995 reforms was the requirement that a state agency provide a neutral hearing officer — one who has not served as an investigator, prosecutor, or advocate in the case and who is not subject to supervision by an investigator, prosecutor, or advocate in the case. Gov't Code § 11425.30.

The Commission recommended that this rule not apply in a Department of Motor Vehicles driver's license hearing, however. Drivers' licensing cases are so voluminous that to require separation of prosecution and hearing functions by the Department of Motor Vehicles would gridlock the system. The statistics at that time showed 325,000 DMV actions against drivers annually, resulting in 157,716 hearings, including 4,259 hearings involving commercial drivers.

The law as enacted exempts drivers' licensing cases from the separation of functions requirements. The exemption is limited in scope, however, and does not extend to other types of operators' certificates, such as schoolbus driver certificates. Veh. Code § 14112. These special certificate hearings are a relatively small portion of the total, and they are all occupational in character.

The Commission noted at the time that there were approximately 200 special certificate hearings annually, at a total cost of about \$20,000. It was concluded that to require separation of functions in this limited class would provide useful experience on the actual cost and benefit of the separation of functions requirement. The Department of Motor Vehicles was directed to study the effect of the separation of functions requirement on proceedings involving special certificates, and report to the Legislature by December 31, 1999, with recommendations concerning experience with its application in these proceedings. Veh. Code § 14112.

DMV REPORT

The Department of Motor Vehicles report has now been released. See Dept. Motor Veh., *Special Certificates: The Efficacy of an Advocate in the Administrative Hearing* (March 2000).

The report takes a sample of schoolbus driver and ambulance driver certificate hearings from before and after the institution of the separation of functions requirement. The before and after comparisons are not completely satisfactory due to other changes in law that may influence results and due to the relatively short experience and limited number of cases on which to base the comparison. Nonetheless, a few key findings emerge:

- It takes about two weeks longer to schedule a special certificate hearing.
- The length of a special certificate hearing has increased by 50%.
- The cost to conduct a special certificate hearing has increased by a minimum of \$160.
- Hearing officers report a greater appearance of impartiality, but no other practical effect except for an increase in time necessary to complete findings of fact and the proposed decision.
- Review board members report a greater appearance of impartiality, improved general conduct of hearings, and improved quality and legal sufficiency of findings in the hearings.
- The number of cases in which DMV's enforcement action is sustained by the adjudicative process has increased by 20%.

The conclusion of the Department is that there is no evidence to suggest that separating the investigate, prosecutorial (advocate) and adjudicative functions in these administrative hearings has any beneficial impact on the proceedings or the final determination. In effect, the use of an advocate may provide only a perception of impartiality. "The results of this study support the conclusion that the increased administrative costs for DMV to expand the use of an advocate to all special certificate adjudicate proceedings cannot be justified." *Id.* at vi, 33. They recommend repeal of the provision.

STAFF ANALYSIS

We think DMV had done a nice analysis that answers many of the questions we had about the cost and benefits of the separation of functions requirement.

However, whether the benefits justify the cost is a judgment call. A clear improvement in the quality of administrative justice (including, critically, a perception of impartiality) may be obtained for \$160+ per case. These are all important cases, affecting occupational licenses.

The cost per case must be balanced against the number of cases. DMV indicates an increase in the number of cases in recent years, due to other factors (notably the advent of developmentally disabled person vehicle driver certificates). The most recent statistics show DMV's annual volume of special certificate hearings at 416. This would yield an increased annual cost of these hearings in excess of \$65,000.

One notable omission from the DMV report, which bears on this issue, is the attitude of certificate holders toward the change in procedure. Do certificate holders also have a greater perception of impartiality? Have the number of appeals from hearing officer decisions, both administrative and judicial, decreased? Do certificate holders prefer the new style of hearing despite the fact that it may result in fewer successful administrative challenges to DMV enforcement actions?

This type of information is difficult to come by. The number of cases is sufficiently small that apparent fluctuations in appeal rates may not be statistically significant. And since most drivers in these proceedings appear in propria persona, they may have no basis for gauging any change in the quality of justice dispensed.

We have asked several organizations whose members are affected by these hearings for their perspectives. The organizations include the California Ambulance Association, the California School Employees Association, and the California Tow Trucking Association. We hope to have some input from this source by the time of the July Commission meeting.

The Commission has a number of options, including:

(1) Do nothing. This would continue the present scheme of separation of functions in certificate hearings but not in driver's license hearings. This would not preclude DMV from independently seeking repeal of the separation of functions requirement as applied to certificate hearings, which they have recommended in the current report.

(2) Recommend repeal of the separation of functions provision as applied to certificate hearings. This would be consistent with the DMV recommendation. If

we were to take this approach, we would first want to circulate for comment a tentative recommendation on the matter.

(3) Recommend extension of the separation of functions provision to driver's license hearings. Assuming the \$160 increased cost per hearing figure holds for these types of cases, that would yield an annual increased cost to DMV in the vicinity of \$25 million.

Of these options, the staff prefers option (1) — do nothing. The estimated \$65,000 added cost for separation of functions in special certificate hearings is significant, but should be manageable within the context of the total DMV budget. The hearings are important, involving the livelihood of the drivers involved, and the improvement in the quality of administrative justice is apparent.

We would amend Vehicle Code Section 14112 to cleanse it of the reporting requirement, perhaps as part of our general statutory cleanup of obsolete pilot projects and reporting requirements.

14112. (a) All matters in a hearing not covered by this chapter shall be governed, as far as applicable, by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Subdivision (a) of Section 11425.30 of the Government Code does not apply to a proceeding for issuance, denial, revocation, or suspension of a driver's license pursuant to this division. ~~The Department of Motor Vehicles shall study the effect of that subdivision on proceedings involving special certificates issued pursuant to Sections 12517 to 12527, inclusive, and shall report to the Legislature by December 31, 1999, with recommendations concerning experience with its application in those proceedings.~~

Comment. Section 14112 is amended to delete the study and reporting requirement. The required study and report has been completed. See Dept. Motor Veh., *Special Certificates: The Efficacy of an Advocate in the Administrative Hearing* (March 2000).

Respectfully submitted,

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Executive Secretary